



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/660,282 | 09/10/2003 | Sandra Darling | 51346-3 | 5302 |

23994 7590 04/09/2007
JOSEPH W MOTT
JENNINGS STROUSS & SALMON PLC
201 EAST WASHINGTON STREET
11TH FLOOR
PHOENIX, AZ 85004-2385

EXAMINER

SAADAT, CAMERON

ART UNIT PAPER NUMBER

3714

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 04/09/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ed

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/660,282 | Applicant(s) DARLING, SANDRA | |
| | Examiner Cameron Saadat | Art Unit 3714 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3714

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/12/2007 has been entered. Claims 1 and 5-9 are pending in this application. Claims 2-4 are cancelled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, and 5-9 are rejected under 35 U.S.C. 102(b) based upon a public use of the invention. It is applicant's own admission that the claimed invention was personally delivered to Bryn Mawr Elementary School on September 10, 2001, which is more than one year prior to the filing date of this application. See Declaration filed 2/9/2007, P 2, paragraph 8.

Claims 1 and 5-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marzano (A Theory-Based Meta-Analysis of Research on Instruction).

Marzano discloses a method of aligning instructional strategies with learning materials, comprising the steps of identifying particular items of knowledge to be learned, classifying the items by

Art Unit: 3714

knowledge domain implicated in each item, wherein the knowledge domain is selected from procedural knowledge and declarative knowledge classifying the items by brain processing function used to learn each item, wherein the brain processing function is a cognitive system; classifying a plurality of instructional strategies by knowledge domain and brain processing function; and selecting instructional strategies that address the knowledge domain and the brain processing function associated with each item of knowledge. *See P. 29, 33, 66, 68, and 75.*

Claims 1, 6, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Walton (US 6,808,392).

Regarding claim 1, Walton discloses a method of aligning instructional strategies with learning materials, comprising the steps of identifying particular items of knowledge to be learned,

classifying the items by knowledge domain implicated in each item, wherein the knowledge domain is selected from procedural knowledge and declarative knowledge (See Col. 12, lines 51-65; Fig. 6);

classifying the items by brain processing function used to learn each item, wherein the brain processing function is a cognitive system (See Col. 12, lines 31-50);

classifying a plurality of instructional strategies by knowledge domain and brain processing function; and selecting instructional strategies that address the knowledge domain and the brain processing function associated with each item of knowledge. *See Fig. 1; Col. 2, lines 36-45.*

Regarding claim 6, Walton discloses a method wherein the cognitive system is separated into information processing, storage and retrieval, input/output and knowledge utilization categories. *See Figs. 4-9.*

Regarding claim 8, Walton discloses a step of ranking the selected instructional strategies according to how well each strategy addresses the knowledge domain and brain processing function associated with each item of knowledge. *See Col. 15, lines 41-57.*

Art Unit: 3714

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walton (US 6,808,392 in view of Elzinga et al. (US Patent Application Publication 2005/0026131; hereinafter Elzinga).

Walton discloses a method of presenting educational information with various instructional strategies and ranks instructional strategies based on student success. Walton does not explicitly disclose that the ranking is based on an effect size. However, Elzinga discloses an educational system that utilizes a learning optimizer to customize the learning environment, wherein student interaction with instructional strategies are evaluated by implementing effect size in order to determine the effect of various learning variables (Paragraph 312). Hence, in view of Elzinga, it would have been obvious to one of ordinary skill in the art to modify the ranking of instructional strategies as described in Walton, by ranking strategies with effect size, in order determine the amount of effect various learning variables may have, in order to optimize the learning environment.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walton (US 6,808,392 in view of George et al. (US 5,978,648); hereinafter George.

Walton discloses all of the claimed subject matters with the exception of explicitly disclosing that the items of knowledge are taken from benchmarks identified under state standards. However, George teaches a method of providing instructional strategies, wherein knowledge items are established based on district goals, which are established by a school/district/state for all grades. Thus, in view of George, it would have been obvious to modify the knowledge items described in Walton, by providing knowledge items established based on state goals, in order to establish a standard goal for each course and its associated curriculum for each grade.

Response to Arguments

Applicant's arguments with respect to claims 1 and 5-9 have been considered but are moot in view of the new ground(s) of rejection. The Declaration filed on 2/9/2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Walton reference. The 37 CFR 1.131 affidavit or declaration must contain an allegation that the acts relied upon to establish the date prior to the reference or activity were carried out in this country or in a NAFTA country or WTO member country. See MPEP 715.07(c).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is (571) 272-4443. The examiner can normally be reached on M-F 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cameron Saadat
Art Unit 3714
April 2, 2007



ROBERT E. PEZZUTO
SUPERVISORY PRIMARY EXAMINER